

Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NICLAS FOSTER, as Personal
Representative of the Estate of MEIKE
FOSTER,

Plaintiff,

v.

AMERICAN HONDA MOTOR
COMPANY, INC., a foreign corporation;
HONDA MOTOR COMPANY, LTD., a
foreign corporation; HONDA NORTH
AMERICA, INC., a foreign corporation;
HONDA OF CANADA
MANUFACTURING d/b/a HONDA OF
CANADA, INC., a foreign corporation;
HONDA R&D AMERICAS, INC., a
foreign corporation,

Defendants.

No. 2:17-cv-01727-JCC

DECLARATION OF
THOMAS J. BREEN IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO
DEFENDANT HONDA'S MOTION TO
EXCLUDE LATE DISCLOSED
SUPPLEMENTAL
REPORT/OPINIONS OF PLAINTIFF'S
RODENT EXPERT

I, Thomas J. Breen, am one of the attorneys representing plaintiff in this matter. I
make this declaration based upon personal knowledge.

1 1. I represent the estate of Meike Foster, who burned to death in the front seat of her nearly
2 new 2014 Honda CR-V on November 26, 2014. Plaintiff's theory of the case, based in part
3 on documents produced over the course of the case by Honda, is that organic material
4 brought into the engine compartment, probably by rodents, was dried by hot exhaust
5 components and eventually ignited.

6
7 2. A number of documents produced by Honda relating to other incidents of fire in 2012-
8 2014 Honda CR-Vs document the presence of rodent nesting material and point to these
9 materials as the cause of the fires. These reports were the subject of Plaintiff's F.R.C.P.
10 30(b)(6) deposition of Honda and were cited in Mark Arndt's report.

11 3. In this case, Honda's experts are of the opinion that the fire was caused by ignition of
12 external debris.

13
14 4. The frequency of the calls about fires in Hondas resulted in Honda designating one call
15 center representative to field all customer inquiries about their Honda catching on fire. I took
16 the deposition of Honda's representative, Walter Menjivar, who was employed by Honda to
17 respond to customer complaints and claims relating to fires and who described Honda's
18 procedures. True and correct excerpts from his testimony are attached as **Exhibit 1**.

19 5. To help the jury understand how and why rodents are attracted to the CR-V, we retained
20 Purdue University Research Professor and Rodentologist, Dr. Grzegorz Buczkowski of
21 Indiana. He provided his expert report on January 14, 2019. His report relied on his
22 examination of an exemplar Honda CR-V; expert Mark Arndt's report (with Google Earth
23 images of the site and numerous references to similar fires); photos of an exemplar vehicle;
24 and technical specifications of the Honda CR-V. *See* Dkt. #43-1, pp. 2 – 8. According to Dr.
25 Buczkowski, the engine compartment design for the 2012-2014 Honda CR-Vs provides a
26 perfect habitat for rodent nesting.

1 6. On February 4, 2019, the parties conducted a mutual inspection of the subject Honda. A
2 number of unburned evergreen needles were found under the ashes but on top of an unburned
3 portion of the engine compartment splash shield. In February 2019, just after the inspection,
4 Honda moved to exclude Dr. Buczkowski and asked for the trial to be continued a few
5 months so Honda “can depose Dr. Buckzkowski (in Indiana) and, more importantly, research
6 and retain their own rodent expert. Dkt. #28., p. 2, at 18-20. On March 14, 2019, the Court
7 denied Honda’s request to strike Dr. Buckzkowski, finding there was ample time for Honda
8 to address his opinion. Separately the Court vacated the April 22, 2019 trial date. Dkt. #34,
9 p. 5 at 14.

10
11 7. The parties struggled to find a new trial date that worked for both sides. Ultimately
12 Plaintiffs agreed to a November 3, 2019, but this created a complication for Plaintiff – Dr.
13 Buczkowski was completely unavailable during that time frame (he’ll be out at sea for
14 several weeks). To ensure a trial date could get set in 2019, Plaintiff elected to instead
15 perpetuate his testimony for trial.

16 8. The Court’s order gave Honda until 60 days before trial to depose Dr. Buczkowski and 45
17 days before trial to disclose a rebuttal expert. Dkt. #34. Meanwhile, Honda is also preparing
18 its rebuttal to Dr. Buczkowski: Honda recently identified Greg Manley as a *fact* witness to
19 testify about rodent activity at the Meridian Country Club, and on September 3, 2019, some
20 seven months after asking for time to retain a rodentologist, Honda stated that it has retained
21 a rodentologist to rebut Dr. Buczkowski’s testimony. Attached as **Exhibit 2** is a true and
22 correct copy of Honda’s e-mail.

23
24 9. When Plaintiff’s proposed June 27, 2019, to perpetuate Dr. Buczkowski, and paid for him
25 to come to Seattle, Honda elected to take Dr. Buczkowski’s deposition that same day.

1 10. This case is Dr. Buczkowski's first time participating in litigation and his deposition
2 testimony was his first ever testimony. To prepare for his testimony Dr. Buczkowski asked to
3 see the site of the fire and the subject Honda CR-V in person. (He had already seen photos of
4 them). He also asked to see Honda's fire reports which were mentioned by Mark Arndt and
5 in which Honda personnel identified the same location Dr. Buczkowski had pointed out is an
6 ideal location for rodent nesting as the location where rodent debris caused Honda CR-Vs to
7 ignite. Dr. Buczkowski also looked photographs of the needles the parties unearthed during
8 the joint inspection after his report.

9
10 11. To prepare for his deposition, Dr. Buczkowski put down notes about his opinions.
11 Everything in those notes is consistent with Dr. Buczkowski's opinions. To the extent they
12 reference information Dr. Buczkowski learned after his report but that confirms and supports
13 his opinion, that information is old news to Honda, who has visited the scene, was at the
14 inspection, and actually produced the documents Dr. Buczkowski reviewed. The notes were
15 produced to Honda at his deposition subject to a subpoena, and Honda had two opportunities
16 to question him about those notes under oath.

17 12. At Dr. Buczkowski's deposition Honda claimed it was prejudiced but did not explain
18 what the prejudice was or how additional time to prepare would make a difference. (Again
19 nothing Dr. Buczkowski referenced in his notes was new information for Honda). Plaintiff
20 told Honda the appropriate remedy is to continue its examination of Dr. Buczkowski. The
21 entire transcript of Dr. Buczkowski's discovery deposition is attached at **Exhibit 3**. The
22 transcript of his perpetuation deposition is attached as **Exhibit 4**. The transcripts have been
23 highlighted for ease of the Court.
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25
26

1 13. After hearing Dr. Buczkowski's testimony, Honda did not elect to adjourn or continue the
2 deposition, but instead elected to proceed with questions. Honda then waited two months to
3 file the subject motion.

4
5 14. This delay by Honda ensures the window the Court gave to Honda to prepare to depose
6 Dr. Buczkowski is narrowing.

7 15. If necessary, Dr. Buczkowski is available for further examination by Honda (including
8 re-opening the cross examination of his perpetuation deposition) until early October.

9
10 16. Though Honda complains about "late" disclosure, Honda's own expert, Mr. Scheibe,
11 produced new videos on August 19, 2019. Also, Honda waited until after the close of
12 discovery and *after* Plaintiff's CR30(b)(6) deposition on other incidents to produce reports of
13 dozens of fires that occurred during the last couple of years. Documents relating to those
14 reports continued to trickle in last month.

15 I declare under penalty of perjury under the laws of the State of Washington and the
16 United States of America that the foregoing statements are true and correct.

17
18 DATED this 3rd day of September, at Seattle, Washington, 2019.

19
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CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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